

MISSISSIPPI LEGISLATURE

2006 Regular Session

To: Public Health and Welfare; Judiciary, Division B

By: Senator(s) Frazier, Albritton

## Senate Bill 2419

(As Sent to Governor)

AN ACT TO CREATE NEW SECTION 17-25-7, MISSISSIPPI CODE OF 1972, TO PREEMPT LOCAL REGULATIONS OF PUBLIC BREAST-FEEDING; TO ESTABLISH AN AFFIRMATIVE RIGHT TO BREAST-FEED; TO AMEND SECTION 19-5-103, MISSISSIPPI CODE OF 1972, TO CONFORM THERETO; TO AMEND SECTION 97-29-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BREAST-FEEDING DOES NOT CONSTITUTE INDECENT EXPOSURE; TO AMEND SECTIONS 97-35-3 AND 97-35-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BREAST-FEEDING DOES NOT CONSTITUTE DISORDERLY CONDUCT; TO AMEND SECTION 97-35-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BREAST-FEEDING DOES NOT CONSTITUTE INDECENT EXPOSURE; TO AMEND SECTION 97-35-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BREAST-FEEDING DOES NOT CONSTITUTE ANY BREACH OF THE PEACE; TO AMEND SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A MOTHER WITH A CHILD 12 MONTHS OF AGE OR YOUNGER MAY BE EXCUSED FROM JURY SERVICE; TO REQUIRE THE STATE BOARD OF HEALTH TO PROMULGATE REGULATIONS FOR CHILD CARE FACILITIES TO PROMOTE BREAST-FEEDING BY THE MOTHERS OF THE CHILDREN BEING CARED FOR; TO PROHIBIT DISCRIMINATION AGAINST A BREAST-FEEDING MOTHER WHO USES HER LAWFUL BREAK TIME TO EXPRESS MILK; TO AMEND SECTION 43-20-8, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** It is the intent of the Legislature to proclaim that breast milk is life sustaining and the perfect food to ensure optimal growth, development and survival of Mississippi children.

**SECTION 2.** The following shall be codified as Section 17-25-7, Mississippi Code of 1972:

17-25-7. No county, municipality or other political subdivision shall enact any ordinance restricting a woman's right to breast-feed her child until such time as the state

may authorize a county, municipality or other political subdivision to enact such an ordinance.

**SECTION 3.** A mother may breast-feed her child in any location, public or private, where the mother is otherwise authorized to be, without respect to whether the mother's breast or any part of it is covered during or incidental to the breast-feeding.

**SECTION 4.** Section 19-5-103, Mississippi Code of 1972, is amended as follows:

19-5-103. (1) In accordance with the provisions of Section 19-3-41, providing that additional powers may be conferred upon the boards of supervisors, the board of supervisors of any county bordering on the Gulf of Mexico and having two (2) judicial districts and the board of supervisors of any county adjacent to any county of this or any adjoining state wherein is located a city having a population in excess of two hundred thousand (200,000), according to the latest federal census, are hereby empowered to promulgate, adopt and enforce ordinances which are necessary and reasonable for the protection of public health and the maintenance of order in relation to the advertisement, the offering of services and the dispensation for compensation of personal services in establishments known as massage parlors and to promulgate, adopt and enforce ordinances which are necessary and reasonable for the protection of public health and the maintenance of order in relation to public displays of nudity.

(2) For the purposes of this section, the term "massage parlor" shall mean any premises where a person manipulates, rubs, caresses, touches, massages, kneads, palpates or otherwise physically contacts the body or part or area of the body of another person. The term "massage parlor" shall not include gymnasias or other premises wherein persons engage in bona fide athletic or conditioning activities, duly licensed barbershop, beauty parlor, chiropractic clinic or other premises of a person practicing a vocation or profession regulated and licensed by the state.

For the purposes of this section, the term "nudity" means uncovered, or less than opaquely covered, postpubertal human genitals, pubic areas, the postpubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are uncovered, however, the term "nudity" does not include a woman's breast-feeding of her child whether or not the breast or any part of it is exposed as any element of breast-feeding.

For the purposes of this section, the term "public display" means the exposing, exhibiting, revealing, or in any fashion displaying the nude human body or any representation thereof in any location in such a manner that it may be readily seen by the public by normal unaided vision and the term also means any play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity or sexual conduct.

(3) Ordinances adopted pursuant to this section shall comport with the elements of due process and shall include but not be limited to specificity, adequate notice, right to hearing, right to counsel, right to appeal adverse findings to a judicial authority and penalties rationally related to prohibited acts.

(4) Boards of supervisors proposing such ordinances shall publish and post notice of such intentions not less than twenty (20) days prior to the holding of a public hearing whereat the purposes and substance of such ordinances shall be fully discussed.

**SECTION 5.** Section 97-29-31, Mississippi Code of 1972, is amended as follows:

97-29-31. A person who willfully and lewdly exposes his person, or private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, is guilty of a misdemeanor and, on conviction, shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or be imprisoned not exceeding six (6) months, or both. It is not a violation of this statute for a woman to breast-feed.

**SECTION 6.** Section 97-35-3, Mississippi Code of 1972, is amended as follows:

97-35-3. (1) Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(a) Crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or

(b) Insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(c) While in or on any public bus, taxicab or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in paragraph (b) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(d) Refuses to leave the premises of another when requested so to do by any owner, lessee or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment.

(2) If any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the penitentiary not longer than ten (10) years.

(3) The act of breast-feeding shall not constitute disorderly conduct.

(4) The provisions of this section are supplementary to the provisions of any other statute of this state.

**SECTION 7.** Section 97-35-7, Mississippi Code of 1972, is amended as follows:

97-35-7. (1) Whoever, with intent to provoke a breach of the peace, or under such circumstances as may lead to a breach of the peace, or which may cause or occasion a breach of the peace, fails or refuses to promptly comply with or obey a request, command, or order of a law enforcement officer, having the authority to then and there arrest any person for a violation of the law, to:

(a) Move or absent himself and any vehicle or object subject to his control from the immediate vicinity where the request, command or order is given, or

(b) Arise, if lying or sitting down, and move to a point designated by said officer outside the immediate area of, or which is affected by the occurrences at, the place of issuing such order, command or request, or

(c) Refrain from lying down or sitting down at, or in the immediate vicinity of, the place where said order, request or command is given, or

(d) Refrain from obstructing, with his body or any part thereof, or in any manner, the lawful movement or passage of any vehicle, or

(e) Refrain from placing, or permitting, or cooperating with another to place, his body or any part thereof, in front of or behind any vehicle, in such manner as to interfere with, or prevent its movement or block its path in lawful movement, or

(f) Refrain from chaining or tying or binding himself or another to any object or person, or

(g) Unbind, unchain or loosen himself, or remove himself, from any chain or other means whereby he may be prevented from moving away from the place or the immediate vicinity where he may be when such officer issues said order, request or command, or

(h) Walk or move to, enter and remain in, either or both, as may be directed by such officer, any police or other vehicle operated by any law enforcement officer or department, or any other vehicle designated by such an officer, or

(i) Act or do or refrain from acting or doing as ordered, requested or commanded by said officer to avoid any breach of the peace at or near the place of issuance of such order, request or command, shall be guilty of disorderly conduct, which is made a misdemeanor and, upon conviction thereof, such person or persons shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(2) Any person who causes, or aids, or encourages, or abets another to violate, or in violating, any provision of subsection (1) hereof, shall be guilty of disorderly conduct which is made a misdemeanor and, upon conviction thereof, such person or persons shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(3) If any person alone or in concert with others violates subsection (1) or (2) hereof, or both, under such circumstances or in such a manner as to evince a willful and wanton disregard for the life or safety of another and if as a result thereof another person or persons be injured, maimed or killed, the person or persons so violating subsection (1) or (2) hereof, or both, shall be guilty of a felony and, upon conviction thereof, such person or persons shall be imprisoned in the State Penitentiary not longer than five (5) years or be fined not more than Two Thousand Dollars (\$2,000.00), or both such fine and imprisonment.

(4) The act of breast-feeding shall not constitute disorderly conduct.

(5) The provisions of this section are supplementary to the provisions of any other statutes of this state.

**SECTION 8.** Section 97-35-11, Mississippi Code of 1972, is amended as follows:

97-35-11. Any person who enters the dwelling house of another, or the yard or curtilage thereof, or upon the public highway, or any other place near such premises, and in the presence or hearing of the family or the possessor or occupant thereof, or of any member thereof, makes use of abusive, profane, vulgar or indecent language, or is guilty

of any indecent exposure of his or her person at such place, shall be punished for a misdemeanor. The act of breast-feeding shall not constitute indecent exposure.

**SECTION 9.** Section 97-35-15, Mississippi Code of 1972, is amended as follows:

97-35-15. (1) Any person who disturbs the public peace, or the peace of others, by violent, or loud, or insulting, or profane, or indecent, or offensive, or boisterous conduct or language, or by intimidation, or seeking to intimidate any other person or persons, or by conduct either calculated to provoke a breach of the peace, or by conduct which may lead to a breach of the peace, or by any other act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail not more than six (6) months, or both.

(2) The act of breast-feeding shall not constitute a breach of the peace.

(3) The provisions of this section are supplementary to the provisions of any other statute of this state.

**SECTION 10.** Section 13-5-23, Mississippi Code of 1972, is amended as follows:

**[Until January 1, 2008, this section shall read as follows:]**

13-5-23. All qualified persons shall be liable to serve as jurors, unless excused by the court for one (1) of the following causes:

(a) When the juror is ill, or when on account of serious illness in the juror's family, the presence of the juror is required at home,

(b) When the juror's attendance would cause a serious financial loss to the juror or to the juror's business, \* \* \*

(c) When the juror is under an emergency, fairly equivalent to those mentioned in the foregoing paragraphs (a) and (b), or

(d) When the potential juror is a breast-feeding mother.

An excuse of illness under paragraph (a) may be made to the clerk of court outside of open court by providing the clerk with either a certificate of a licensed physician or an affidavit of the juror, stating that the juror is ill or that there is a serious illness in the juror's family. The test of an excuse under paragraph (b) shall be whether, if the juror were incapacitated by illness or otherwise for a week, some other persons would be available or could reasonably be procured to carry on the business for the week, and the test of an excuse under paragraph (c) shall be such as to be the fair equivalent, under the circumstances of that prescribed under paragraph (b). In cases under paragraphs (b), (c) and (d), the excuse must be made by the juror, in open court, under oath.

It shall be unlawful for any employer or other person to persuade or attempt to persuade any juror to avoid jury service, or to intimidate or to threaten any juror in that respect. So to do shall be deemed an interference with the administration of justice and a contempt of court and punishable as such.

But a tales juror, save when drawn and retained for the week, shall not be compelled to serve two (2) days successively unless the case in which the juror is impaneled continues longer than one (1) day. Grand jurors shall serve until discharged by the court.

**[From and after January 1, 2008, this section shall read as follows:]**

13-5-23. (1) All qualified persons shall be liable to serve as jurors, unless excused by the court for one (1) of the following causes:

(a) When the juror is ill and, on account of the illness, is incapable of performing jury service; \* \* \*

(b) When the juror's attendance would cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision; or

(c) When the potential juror is a breast-feeding mother.

(2) An excuse of illness under subsection (1)(a) of this section may be made to the clerk of court outside of open court by providing the clerk with a certificate of a licensed physician, stating that the juror is ill and is unfit for jury service, in which case the clerk may excuse the juror. If the excuse of illness is not supported by a physician's certificate, a judge of the court for which the individual was called to jury service shall decide whether to excuse an individual under subsection (1)(a) of this section.

(3) (a) The test of an excuse under subsection (1)(b) of this section for undue or extreme physical or financial hardship shall be whether the individual would either:

(i) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury; or

(ii) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or

(iii) Suffer physical hardship that would result in illness or disease.

(b) "Undue or extreme physical or financial hardship" does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment or business.

(c) A judge of the court for which the individual was called to jury service shall decide whether to excuse an individual under subsection (1)(b) of this section.

(d) A person asking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

(e) A person asking a judge to grant an excuse under subsection (1)(b) of this section shall be required to provide the judge with documentation such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

(f) In cases under subsection (1)(c) of this section, the excuse must be made by the juror in open court under oath.

(4) After two (2) years, a person excused from jury service shall become eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

(5) A tales juror shall not be compelled to serve two (2) days successively unless the case in which the juror is impaneled continues longer than one (1) day. Grand jurors shall serve until discharged by the court.

**SECTION 11.** The Department of Health shall promulgate regulations to ensure that licensed child care facilities shall be required to comply with the following:

(a) Breast-feeding mothers, including employees, shall be provided a sanitary place that is not a toilet stall to breast-feed their children or express milk. This area shall provide an electrical outlet, comfortable chair, and nearby access to running water.

(b) A refrigerator will be made available for storage of expressed breast milk following guidelines from the American Academy of Pediatrics and Centers for Disease Control in ensuring that breast milk is properly treated to avoid waste. Universal precautions are not required in handling human milk.

(c) Staff shall be trained in the safe and proper storage and handling of human milk.

(d) Breast-feeding promotion information will be displayed in order to positively promote breast-feeding to the clients of the facility.

(e) Such other requirements as the Board of Health finds desirable or necessary to promote and protect breast-feeding.

**SECTION 12.** No employer shall prohibit an employee from expressing breast milk during any meal period or other break period provided by the employer.

**SECTION 13.** Section 43-20-8, Mississippi Code of 1972, is amended as follows:

43-20-8. (1) The licensing agency shall have powers and duties as set forth below, in addition to other duties prescribed under this chapter:

(a) Promulgate rules and regulations concerning the licensing and regulation of child care facilities as defined in Section 43-20-5;

(b) Have the authority to issue, deny, suspend, revoke, restrict or otherwise take disciplinary action against licensees as provided for in this chapter;

(c) Set and collect fees and penalties as provided for in this chapter; and

(d) Have such other powers as may be required to carry out the provisions of this chapter.

(2) Child care facilities shall assure that parents have welcome access to the child care facility at all times and shall comply with the provisions of Senate Bill No. 2419, 2006 Regular Session.

(3) Each child care facility shall develop and maintain a current list of contact persons for each child provided care by that facility. An agreement may be made between the child care facility and the child's parent, guardian or contact person at the time of registration to inform the parent, guardian or contact person if the child does not arrive at the facility within a reasonable time.

(4) Child care facilities shall require that, for any current or prospective caregiver, all criminal records, background and sex offender registry checks and current child abuse registry checks are obtained. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(5) The licensing agency shall require to be performed a criminal records background check and a child abuse registry check for all operators of a child care facility and any person living in a residence used for child care. The Department of Human Services shall have the authority to disclose to the State Department of Health any potential applicant whose name is listed on the Child Abuse Central Registry or has a pending administrative review. That information shall remain confidential by all parties. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no

disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(6) The licensing agency shall have the authority to exclude a particular crime or crimes or a substantiated finding of child abuse and/or neglect as disqualifying individuals or entities for prospective or current employment or licensure.

(7) The licensing agency and its agents, officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendations or actions taken under this section.

(8) All fees incurred in compliance with this section shall be borne by the child care facility. The licensing agency is authorized to charge a fee that includes the amount required by the Federal Bureau of Investigation for the national criminal history record check in compliance with the Child Protection Act of 1993, as amended, and any necessary costs incurred by the licensing agency for the handling and administration of the criminal history background checks.

**SECTION 14.** This act shall take effect and be in force from and after its passage.

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